

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM AND SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./WTA Nos. 02, 03 & 04/JP/2017
निर्धारण वर्ष/Assessment Years : 2004-05, 2005-06,2006-07.

Sh. Mewa Singh Bola, M/s Bola Automobiles Road No. 3, Jhunjhunu.	बनाम Vs.	ADWT International Taxation , Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. AHNPB 5477 E		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri Manish Agarwal (CA)
राजस्व की ओर से/ Revenue by: Shri A.S. Nehra (JCIT)

सुनवाई की तारीख/ Date of Hearing : 14.12.2017.
घोषणा की तारीख/ Date of Pronouncement : 27/02/2018.

आदेश/ ORDER

PER BENCH

These three appeals by the assessee are directed against the three separate orders of Commissioner of Wealth Tax (Appeals)-42, New Delhi, dated 16/02/2016 and 19/02/2016 for the Assessment Years 2004-05, 2005-06 & 2006-07 respectively.

2. There is delay of 332 days in filing these appeals. The assessee has filed the petition for condonation of delay as well as supporting affidavit.

3. We have heard the Ld. AR as well as Ld. D/R and perused the explanation furnished by the assessee in the application for condonation of delay. The assessee has stated to be a Non Resident Indian (NRI) living in Saudi Arabia since last 25 years and has not visited in India for last 2-3 years during which the Wealth tax assessment proceedings were under progress. It was further submitted that the assessment proceedings were completed in the absence of assessee and without

providing sufficient opportunities of being heard. The assessee has stated in the application that the impugned orders passed by the Ld. Commissioner of Wealth Tax (A) were not received by the assessee but the same were served upon the business place of the assessee in India, and was kept by his staff without realizing the importance of the same. Therefore, the assessee was not aware about the impugned orders passed by the Ld. Commissioner of Wealth-tax (A), and only when the notice for levying the penalty by the AO were received by the assessee, the assessee realized the non receipts of impugned orders passed by the CWT(A).

4. The Ld. AR of the assessee has submitted that only on receipt of notices for levy of penalty, the assessee consulted with his Counsel who enquired about the status of appeals filed against the orders passed by the Ld. Commissioner of Wealth Tax (A). Thus, it was pleaded that the delay in filing the appeal is neither intentional nor willful but due to the bonafide mistake and is absolutely inadvertent and has occurred due to circumstances beyond the control of the assessee. Thus, the Ld. AR has pleaded that the delay in filing the appeal may be condoned. The CWT (A) passed impugned orders ex-parte without hearing the assessee.

5. On the other hand, the Ld. DR has vehemently opposed the condonation of delay and submitted that this is not an ordinary delay in filing the appeal, but the assessee cannot misuse the process of law by filing the belated appeal after about 332 days. Thus, the Ld. DR has contended that explanation of the assessee cannot be considered as reasonable or sufficient cause for not filing the appeals within the period of limitation.

6. Having considered the rival contentions as well as relevant material on record we note that the assessee is a Non-Resident Indian (NRI) and working in Saudi

Arabia for last more than 20 years. The assessee is having his business in India in the name and style of M/s Bola Automobiles at Jhunjhunu. Though, the assessee challenged the assessment order passed by the AO before the Ld. CWT(A), however, none has appeared on behalf of the assessee before the CWT(A) and the impugned orders were passed ex-parte. This shows that the assessee being away and outside India could not look after the tax matters personally, but was completely dependent upon representatives for this purpose. It is also not in a dispute that the impugned orders were not received by the assessee personally because of his non-availability of India but were served at the business place of the assessee. The possibilities of not bringing the impugned orders to the knowledge of the assessee cannot be ruled out. Though, the assessee cannot take the plea of his being NRI could not file the appeal within a period of limitation however, since the assessee has explained that the orders were served at the business premises of the assessee and the employee of the assessee could not brought to the notice of the assessee, the receipt of the impugned orders. Thus, the explanation and reasons put forth by the assessee do not show that the assessee has acted in malafide and to take advantage of saving the limitation in an under hand way. We find that the assessee being not visited India for last 2-3 years itself is a cogent reason for not taking the requisite steps in time for filing the appeals against the impugned orders. Therefore, following the settled proposition of law that the Courts should take a liberal approach while deciding the condonation of delay we are satisfied that the reason and cause explained by the assessee are sufficient for not filing the appeals within the period of limitation. The cause of substantial justice has to be preferred when pitted against the technical consideration. Therefore, having regard to the facts and circumstances of the case

and in the interest of justice we condone the delay of 332 days in filing these appeals.

7. The assessee has raised the common grounds in these appeals:- The ground raised for the **A.Y. 2004-05** are as under:-

- “1. On the facts and in the circumstances of the case and in law, Ld. CWT (A) erred in confirming the order passed by Ld. AO without providing sufficient opportunity of being heard.
 - 1.1 That the Ld. CWT(A) erred in confirming the computation of Net Wealth of Assessee as Rs. 55,52,000/- as made by Ld. AO without considering the submission made by assessee.
 - 1.2 That, the Ld. CWT(A) erred in confirming the order passed by Ld. AO ignoring the submission made by assessee that all the properties under consideration were agricultural lands and thus exempt from Wealth Tax.
2. That the appellant craves the right to add, delete, amend or abandon any of the grounds of appeal either before or at the time of hearing of appeal.”

8. We have heard the Ld. AR as well as Ld. D/R and considered the relevant material on record. The impugned orders were passed by the CWT(A) ex parte when nobody has appeared on behalf of the assessee. Since the assessee is depend on the Authorized Representative and could not look after the matter personally as staying outside India therefore, in the facts and circumstances of the case and in the interest of justice, we allow one more opportunity to the assessee to present his case before the Ld. CWT(A). Accordingly, the impugned orders are set aside and the matter is remanded to the record of the CWT(A) for deciding the same afresh after allowing the opportunity of hearing to the assessee. We make it clear that if the assessee fails to appear before the Id. CWT then the opportunity granted by us would stand vacated.

9. In the result, appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on 27/02/2018.

Sd/-

(विक्रम सिंह यादव)

(VIKRAM SINGH YADAV)

लेखा सदस्य /Accountant Member

Sd/-

(श्री विजय पाल राव,)

(VIJAY PAL RAO)

न्यायिक सदस्य / Judicial Member

Jaipur

Dated:-27/02/2018.

Pooja/

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant-Sh. Mewa Singh Bola, Jhunjhunu.
2. The Respondent – ADWT, International Taxation, Jaipur.
3. The CIT.
4. The CIT (4),
5. The DR, ITAT, Jaipur
6. Guard File (WTA No. 02, 03 & 04/JP/2017)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar